IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CIVIL REVISION APPLICATION NO. 84 OF 2004

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri Shantu Khedkar, Advocate for the applicants.
Shri N.R. Saboo, AGP for the respondent.

CORAM : B.R. GAVAI, J.
23RD AUGUST, 2006

By way of present revision application, the applicants challenge the order passed by the learned II Joint Civil Judge (Senior Division), Amravati thereby rejecting the objection of the present applicants vide order dated 16.02.2004 in Regular Darkhast No. 164 of 1990.

The respondent had filed Regular Civil Suit No. 546/1987 for eviction and possession of the premises which were allegedly rented out by the respondent to the applicants. The said suit being Regular Civil Suit No. 546/1987 came to be decreed on 09.04.1990. Thereafter the respondent/decree holder preferred Regular Darkhast No. 146/1990 before the VI Joint Civil Judge, Senior Division, Amravati. The present applicants preferred an objection vide Exh.35. However, the same came to be rejected vide order dated 16th December, 2000. The rejection of the objection came to be

challenged before this Court vide Civil Revision Application No. 1169/2000. This Court, vide order, dated 16.03.2002, remanded the matter to the trial Court for consideration afresh. On remand, the objection came to be rejected again vide order dated 16.03.2002. Hence, this petition.

Heard Shri Shantanu Khedkar, the learned Counsel appearing on behalf of the applicants and Shri N.R. Saboo, the learned Counsel appearing on behalf of the respondent.

Shri Shantanu Khedkar, the learned Counsel for the applicants submits that from the evidence that was led before the learned executing Court, it was clear that the tenanted premises were notified as the slum area. As such, in view of the provisions of Section 22 of the Maharashtra Slum Area (Improvement, Clearance and Re-development) Act, 1971, no suit could be instituted for obtaining any decree or order for the eviction of the applicants. He submits that the issue of tenability of the suit goes to the root of the matter and, therefore, objection could have been raised for the first time before the executing Court also. He further submits that the evidence which has been led before the learned executing Court has not been appreciated properly and as such the impugned order is rendered to be perverse.

He relies on the judgment of the Apex Court in the case of **Sunder Dass .v. Ram Prakash (reported in AIR 1977 SC 1201)** and in the case of **Urban Improvement Trust, Jodhpur .v. Gokul Naraian and others (reported in 1996 SC 1819)**.

As against this, Shri N.R. Saboo, the learned Counsel for the respondent submits that the question as to whether the suit premises fall under the slum area is the mixed question of fact and law and as such it could not be raised for the first time in the execution proceedings. He further submits that the evidence that was led did not discharge the burden of proving that the suit property was notified as slum area. He relies on the judgment of the learned Single Judge of this Court in the case of **Bhaurao .v. Smt. Savitribai and others (reported in AIR 1991 Bombay 55)**.

No doubt that the decree which is passed without jurisdiction is a nullity. The issue of jurisdiction goes to the root of the matter. If the decree is passed without jurisdiction, it is non est in law and objection of the same could also be raised at the execution stage. However, from the scheme of the Act, it can be seen that the question as to whether a particular property is covered under the provisions of the said Act is a mixed question of facts and law. It is necessary to prove that

the property in question is notified under the said Act. The learned Single Judge in the case of Bhaurao .v. Savitribai and others (cited supra), has taken a view that since this is a mixed question of fact and law, it cannot be raised for the first time in the execution proceedings. Even otherwise, it can be seen from the objection of the present petitioner that no details regarding as to how the property is covered under the said Act are given. From the evidence that was led on behalf of the applicants also, it cannot be said to have been proved that the property in question is proved to be covered under the said notification. The learned trial Court has also found that the applicants have failed to prove the identity of the property inasmuch as the house number in the evidence of the witnesses on behalf of the objector and house number of the suit property were not same. It is further to be noted that the respondent/landlord has been put in possession of the suit premises way back in the year 2000. Taking into consideration all these aspects, I do not find that the jurisdiction exercised by the learned trial Court can be said to have been exercised in perverse manner. No interference is called for. Hence, the Civil Revision Application is rejected.

JUDGE

*rrg.